

1 especially as it goes to secondary and tertiary TV sets.

2 Q When did you first learn about the prospect of  
3 meters in the Orlando market?

4 A I think it was late May, early June. I think it  
5 was late May of 1991.

6 Q Do you remember whether you learned about that  
7 before or after Judge Marcus denied the preliminary  
8 injunction?

9 A It was about that time. I really can't -- I have  
10 pondered this question and I cannot tell you whether it was  
11 just before or just after, but it was about that time.

12 Q When you told Mr. Conant about your views of the  
13 potential of the station in the Orlando market, what was his  
14 reaction, if you recall?

15 A He related very well to that. I mean, he  
16 understood that from the Miami experience. He was ready to  
17 go ahead.

18 Q After the Supreme Court decision had become final  
19 in August of 1990, did you have a belief as to how long  
20 Rainbow Broadcasting Company would have to complete the  
21 construction if its station under FCC policy?

22 A After August of 1990?

23 Q Yes.

24 A Yes, I believed it had two years to construct.

25 Q What was your belief based on?

1           A     Well, it's just general knowledge that I had about  
2     the FCC, but specifically I recall the conversation with  
3     counsel regarding the 1988 reinstatement of -- well,  
4     cancellation of the construction permit for failure to  
5     construct for two years, from '86 to '88, and then  
6     thereafter the reinstatement, and the argument that we put  
7     forth to the Commission that we should have our two years  
8     after final grant.

9           Mr. Oppenheimer, to the best of my recollection,  
10    said no, six months at a time, and you will get your two  
11    years, but the mechanism is six month extensions. But I  
12    always thought that we would get two years from final grant.

13           MR. EISEN: Thank you, Mr. Rey.

14           I have nothing further, Your Honor.

15           JUDGE CHACHKIN: All right.

16           MS. POLIVY: I have a few questions, Your Honor.

17           JUDGE CHACHKIN: Is this a joint exhibit or is  
18    this a --

19           MS. POLIVY: Well, it's not an exhibit. It's a  
20    witness.

21           JUDGE CHACHKIN: It's a witness.

22           And you're not going to ask any questions about  
23    the ex parte issue, I assume?

24           MS. POLIVY: No, sir.

25           JUDGE CHACHKIN: All right, go ahead.

## DIRECT EXAMINATION

1

2

BY MS. POLIVY:

3

Q Mr. Rey, I would like to turn your attention back  
4 to the loan agreement with Mr. Conant.

5

A Yes.

6

Q Was Mr. Conant's -- what was to be the position of  
7 Mr. Conant's loan?

8

A Mr. Conant's loan was junior to any equipment  
9 lender.

10

Q Was it junior to anything else?

11

A I have a mental block.

12

He agreed to be junior to an equipment lender.  
13 That's what comes to mind at the time, at this time.

14

Q Mr. Conant's loan was not -- was an oral loan,  
15 correct?

16

A Yes.

17

Q Was there any provision for it being put in  
18 writing?

19

A We had agreed we would put it in writing when it  
20 was time to commence construction when the permit was free  
21 and clear.

22

Q Turning your attention to the preliminary  
23 injunction matter with Judge Marcus.

24

A Um-hmm.

25

Q And the tower litigation.

1           When that preliminary injunction motion was heard,  
2       which was in early 1991; is that correct?

3           A     I believe it was January of 1991.

4           Q     Did you have any reason to anticipate when a  
5       decision would be released in that preliminary injunction?

6           A     No. We all thought, and when I say "we," I think  
7       Defendants did too, we all thought that it was going to be  
8       fairly quick.

9           Q     And when in fact was that preliminary injunction  
10      decision issued?

11          A     Oh, it took six months. It was in June of 1991.

12               MS. POLIVY: I have no other questions on direct.

13               JUDGE CHACHKIN: All right.

14               Mr. Cole, are you ready to proceed?

15               MR. COLE: Could we take a 10-minute break so I  
16      can review my notes?

17               JUDGE CHACHKIN: All right, we will take a 10-  
18      minute break at this time.

19               (Whereupon, a recess was taken.)

20               JUDGE CHACHKIN: Back on the record.

21               Mr. Cole.

22               MR. COLE: Thank you, Your Honor.

23                       CROSS-EXAMINATION

24               BY MR. COLE:

25           Q     Good morning, Mr. Rey.

1           You and I have seen each other multiple times over  
2   the last month or two but I will introduce myself again for  
3   the record. I am Harry Cole, counsel for Press Broadcasting  
4   Company.

5           Mr. Rey, am I correct that you have attended the  
6   depositions in this proceeding of Mr. Conant, Ms. Leticia  
7   Jaramillo, Roy Stewart, Barbara Kreisman, Clay Pendarvis and  
8   Margot Polivy?

9           A     I don't think I attended Ms. Margot Polivy's  
10   deposition. The other ones I believe are correct.

11          Q     I stand corrected.

12                And you have attended all the hearing sessions to  
13   date in this hearing before Judge Chachkin?

14          A     Yes, sir. The last two days.

15          Q     Now, Mr. Rey, just by way of background, it's  
16   correct to say that in its original construction petition  
17   filed in, I believe, 1982, Rainbow Broadcasting Company  
18   represented to the FCC that it was financially qualified to  
19   construct and operate; is that correct?

20          A     That's correct.

21          Q     And subsequent to the grant of your application of  
22   the original construction application, the parties have  
23   stipulated you filed -- strike that.

24                Rainbow filed four extension applications: one in  
25   July of '88, one in May of '89, one in November of '89 and

1 one in July of '90; is that correct?

2 MS. POLIVY: We will stipulate to that subject to  
3 checking. I don't think that it's proper to ask the  
4 witness.

5 MR. COLE: I apologize. I am reading from Joint  
6 Exhibit No. 1, Stipulation No. 8.

7 MS. POLIVY: Well, we stipulated, Your Honor. It  
8 speaks for itself.

9 BY MR. COLE:

10 Q To the best of your recollection, Mr. Rey, in each  
11 of those extension applications did Rainbow represent to the  
12 FCC that the representations that had been set forth in its  
13 original construction permit remain true and correct?

14 MS. POLIVY: I am going to object, Your Honor,  
15 unless he has something to show the witness. I don't think  
16 it's proper to ask him to --

17 MR. COLE: Well, Your Honor, I was hoping to avoid  
18 throwing more paper into the proceeding.

19 MS. POLIVY: Your Honor.

20 MR. COLE: At least for recollection purposes I  
21 will distribute copies of the four extension applications  
22 and have them identified.

23 MS. POLIVY: Your Honor, we are willing to  
24 stipulate that the box that appears on the 307 application  
25 which reads -- some of them are 701s, but I believe the same

1 box appears on all of them -- that says that "The  
2 representations contained in the application for the  
3 construction permit is still true and correct" were in each  
4 of those instances checked "Yes."

5 JUDGE CHACHKIN: All right.

6 MS. POLIVY: Will that satisfy you?

7 MR. COLE: That will satisfy me.

8 I assume that stipulation also applies to Rainbow  
9 Broadcasting Company?

10 MR. EISEN: Yes. And, of course, Joint Exhibits 2  
11 and 3 comprise two of those extension requests.

12 MR. COLE: No, those comprise five and six, the  
13 fifth and sixth extension requests. I am speaking about the  
14 first four.

15 MR. EISEN: Oh, okay. I understand.

16 JUDGE CHACHKIN: The stipulation is accepted.

17 MR. COLE: Thank you.

18 BY MR. COLE:

19 Q Now, Mr. Rey, after the fourth Rainbow extension  
20 application was filed in July of 1990, I believe you  
21 testified, I think we can take judicial notice of the fact  
22 that the original grant of the construction permit became  
23 final in August of 1990 through the Supreme Court.

24 Is it correct to say that at that point, the  
25 finality at the Supreme Court stage, there was no pending

1 litigation concerning RBC's construction permit?

2 A After August 30th there was no pending litigation  
3 at the FCC regarding RBC's construction permit. Yes, that's  
4 correct.

5 Q So is it also correct to say at that point there  
6 was no reason not to construct?

7 A On August 30th or the next day?

8 Q August 31, 1990.

9 A Yes, that's correct.

10 Q Now, approximately two months later though RBC  
11 filed its lawsuit against Guy Gannett Publishing Company; is  
12 that correct, the Miami tower litigation?

13 A I don't recall the exact date, but I think it was  
14 October 1990.

15 Q So within the next two months; sometime between  
16 September 1 and November 1 a lawsuit was filed?

17 A I believe so. That's correct.

18 Q Now, is it also correct to say that the purpose of  
19 Rainbow's lawsuit was to keep Gannett Tower from leasing  
20 certain space on its tower to Press Broadcasting Company?

21 A The purpose of the lawsuit was to preserve the  
22 rights that we had leased back in 1986, Rainbow's rights  
23 that we had leased in 1986.

24 Q And is it correct to say that one effect that you  
25 were seeking to accomplish in preserving those rights was to



1 keep Gannett from leasing certain space on its tower to  
2 Press Broadcasting Company?

3 MS. POLIVY: I am going to object to the question,  
4 Your Honor.

5 How is that relevant?

6 MR. COLE: Your Honor, he has testified  
7 extensively this morning as to the whys and wherefores of  
8 the tower litigation, and he was concerned about being the  
9 sixth station in the market. I think we need to -- I think  
10 I am entitled at this point to explore at least briefly the  
11 motivations behind the lawsuit which Rainbow initiated in  
12 Miami.

13 MR. EISEN: Well, there was no objections, Your  
14 Honor, to the question.

15 MS. POLIVY: It's the question that he's asked  
16 that is objectionable. I mean, the witness has already  
17 testified that the lawsuit was initiated to vindicate the  
18 rights in the lease that Rainbow had since 1986.

19 MR. COLE: But he has also testified this morning,  
20 Your Honor, that --

21 JUDGE CHACHKIN: I will overrule the objection.

22 MR. COLE: Thank you, Your Honor.

23 THE WITNESS: I'm sorry, Mr. Cole. The question  
24 again, please.

25 BY MR. COLE:

1           Q     Is it also correct to say that one effect of the  
2     purpose you were seeking to achieve in this lawsuit was to  
3     keep Gannett Tower from leasing certain space on its tower  
4     to Press Broadcasting Company?

5           A     The litigation dealt with a specific unique spot  
6     on the tower that I will describe as the 1500 foot slot.  
7     Now, it was uniquely represented to Rainbow in the  
8     negotiations on the lease in 1985, and were incorporated  
9     into the lease in 1986, when it was signed. It was  
10    represented then and I bought into the fact that there were  
11    two unique spots on that tower, as Exhibit C on the lease  
12    shows: one at 1500, one at 1400. Rainbow leased the 1500  
13    foot slot on that tower.

14                At the time, in 1985, Rainbow had done an analysis  
15    and I have bills from Wiley & Rein that we had looked into  
16    the possibility of a Channel 68 and a Channel 18 swapping,  
17    and the requisite of distance that Channel 18 would have had  
18    from the Bithlo area to put a city gray signal over  
19    Clermont, the city of license, that would have required a  
20    Channel 18 transmission to occur from a minimum of 1500  
21    feet, and that was marginal. More likely 1600 feet, which  
22    is the FAA sanction height at that area.

23                So I was not preventing Gannett from leasing space  
24    to anybody in that 1400 foot slot. I was preserving what I  
25    had leased and paid rent for on that 1500 foot slot.

1 Q Let me ask my question again.

2 Is it correct to say that one effect that you were  
3 seeking to accomplish by the filing of the lawsuit against  
4 Gannett was to prevent Gannett Tower from leasing certain  
5 space, and I believe from your testimony just now, we can  
6 identify that as a space at the 1500 foot height on the  
7 tower, to prevent Gannett from leasing such space to Press  
8 Broadcasting?

9 A If the question refers to duplicating a 1500 foot  
10 slot, the answer is yes.

11 Q Could you tell me, Mr. Rey, was it was that  
12 Rainbow filed its lawsuit against Guy Gannett in November or  
13 October of 1990, as opposed to any earlier time?

14 A No, that's when it came to the head. In August of  
15 1990, I was specifically told by Rick Edwards that the  
16 landlord was intending to sign a lease for a space that was  
17 duplicate to the one that I had leased in 1986.

18 Q Isn't it true, Mr. Rey, that Mr. Edwards had told  
19 you of the landlord's interest in leasing Press space on the  
20 tower two years earlier?

21 A I believe in 1988 Mr. Rick Edwards called me  
22 asking for consent. I did not give it. Later on, possibly  
23 a year later, he visited me. He asked for consent. I did  
24 not give it. But neither one of those two times did he say  
25 that they were about to sign a lease. They were just asking

1 for consent.

2 Now, I got a legal opinion in Florida that until  
3 there was a specific action on behalf of the landlord  
4 regarding duplicating our space -- by our space I mean  
5 Rainbow space that it had previously leased -- that legal  
6 action could not be taken.

7 I don't know if that answers your question, Mr.  
8 Cole.

9 Q But you are aware, are you not, that Guy Gannett  
10 Publishing Company provided Press with a letter of  
11 reasonable assurance of the availability of that spot on the  
12 tower, which was submitted to the FCC in 1989?

13 Are you not aware of that?

14 A I became aware of that letter, I don't know  
15 exactly when I became aware of that letter, but I became  
16 aware of that letter, I believe, it was during the  
17 litigation in Miami. I'm not sure when I became aware of  
18 that letter.

19 MR. COLE: Your Honor, if I could ask Ms. Farhat  
20 to distribute to counsel and to Your Honor and to the  
21 witness copies of a document which is five pages in length,  
22 not including the unnumbered, unpaginated cover page  
23 entitled "Court and Order," Mass Media Document 968. It's a  
24 formal opinion of the allegations by the Commission which  
25 was reported in the FCC report at 4 FCC Record 8320.

1           At this point I don't think I need to -- I defer  
2   to Your Honor. This is in the formal FCC reports. I am not  
3   sure we need to even mark it for identification, but I  
4   brought it to the courtroom this morning.

5           JUDGE CHACHKIN: Well, I assume the purpose is to  
6   find out if the witness has ever seen it.

7           MR. COLE: That's correct.

8           JUDGE CHACHKIN: Well, then, I will mark it as  
9   Press Exhibit 8.

10          MR. COLE: Thank you, Your Honor.

11                               (The document referred to was  
12                               marked for identification as  
13                               Press Exhibit No. 8.)

14          MR. SILBERMAN: Excuse me, Your Honor. It's 7, I  
15   believe.

16          MR. COLE: It should be 8. Six, according to my  
17   notes, is the July 9 Baker letter to Mr. Rey and 7 is the  
18   July 17 Baker letter.

19          MR. SILBERMAN: Thank you.

20          BY MR. COLE:

21          Q   And, Mr. Rey, in particular I direct your  
22   attention to paragraph nine of this decision, the third  
23   sentence.

24          A   The third line down or the third sentence?

25          Q   Third sentence.

1           A     Beginning with --

2           Q     Press submits a copy of a letter offering  
3 assurance that space -- on the proposed tower.

4           A     Okay.

5           Q     And I also call your attention to paragraph one,  
6 the final two sentences which include reference to the fact  
7 that Rainbow Broadcasting Company had filed opposing  
8 comments and that Rainbow had filed reply comments in this  
9 proceeding.

10                   Do you see that?

11          A     It says, "Rainbow Broadcasting Company, permittee  
12 of Channel 65, Orlando, and the National Association of  
13 Public Television Stations file opposing comments. Press,  
14 BBC and Meridith and Rainbow filed reply comments."

15                   I see that, yes.

16          Q     Does this refresh your recollection as to when you  
17 knew that Guy Gannett intended to lease space on the tower  
18 at that height to Press Broadcasting?

19                   MS. POLIVY: Your Honor, I object to the question.  
20 That doesn't show anything about a 1500 foot slot. The  
21 witness has testified that there was space on the tower. I  
22 don't know what relevance it has to this proceeding, in any  
23 event. But obviously we are just going to get into another  
24 citing on this.

25                   The question here is whether or not Rainbow

1 misrepresented or lacked candor in its submissions to the  
2 Commission regarding the tower litigation.

3 MR. COLE: Your Honor, if I might.

4 MS. POLIVY: We will stipulate that we opposed the  
5 swap, but that has nothing to do with what is being  
6 testified to, and certainly what the witness has been asked  
7 to look at has nothing to do with what the witness is  
8 testifying to.

9 MR. COLE: Your Honor, Mr. Rey has testified  
10 extensively as to why it was that Rey v. Gannett lawsuit was  
11 filed, and his concerns about being the sixth market  
12 station, and also his recognition, which he testified to in  
13 response to my question just now, about the importance of  
14 being about to attain coverage by Press only from the 1500  
15 or 1600 slot as opposed to the 1400 slot. That was what was  
16 at issue in the swap rulemaking which I have provided.

17 As far as the relevance to this proceeding is  
18 concerned, I think it is important that we have background  
19 to explain the genesis of the Rey v. Gannett decision --  
20 litigation, which, again, was voluntarily initiated by  
21 Rainbow two months after they got the construction permit  
22 free and clear.

23 I think it also goes to Mr. Rey's credibility  
24 because Mr. Rey has testified this morning, he had also  
25 stated in his declaration that was submitted with the motion

1 for summary decision in April, and he has suggested that  
2 this was something of a surprise to him. He uncovered the  
3 information of Press coming on after the Supreme Court  
4 decision. In fact, he knew about the fact that Press was  
5 there as early as 1988 through Mr. Edwards at Gannett, and  
6 he knew when the report order of the FCC proceeding that  
7 Press was in fact planning to build with Gannett's blessings  
8 some time in November of 1989.

9 If nothing else, I think that goes to his  
10 credibility and the credibility of the representations to  
11 Your Honor this morning and his declaration.

12 MS. POLIVY: Your Honor, there are two things.

13 Number one, this witness has already testified  
14 that he had been approached and denied permission to  
15 Gannett, the tower owner, twice in that period of time.  
16 Whether or not there was a reasonable assurance letter is  
17 quite a different legal thing than being ready to sign a  
18 lease.

19 What he is trying to use has no reference to a  
20 1500 foot as opposed to a 1400 foot slot. The Commission  
21 did not want to get involved in the question of whether  
22 there was a prior lease. The Commission said that that was  
23 a private matter, and left to the courts.

24 This is just another way to bring a red herring  
25 into this case, and it's not relevant to the issues.



1 JUDGE CHACHKIN: I don't see how this document is  
2 relevant to the issues of this case, whether they  
3 misrepresented the litigation. He has already acknowledged  
4 that he knew in '88 -- in fact, Rainbow had been asked  
5 whether they granted permission from the landlord, and he  
6 had denied permission to the landlord.

7 So, insofar as him being aware of Press's  
8 intentions, he admits he was aware of Press's intentions,  
9 but he takes the position that until some action was taken  
10 specifically by the landlord there was nothing to do in  
11 terms of enforcing the agreement, which he believed he had  
12 the prior agreement.

13 MR. COLE: I understand that, but this document  
14 reflects the landlord has provided a letter to Press  
15 indicating its willingness to provide space, paragraph nine.

16 JUDGE CHACHKIN: It doesn't indicate -- does it  
17 indicate at the 1500 foot slot?

18 MR. COLE: Your Honor, that was, I believe, the  
19 focal point of the comments.

20 JUDGE CHACHKIN: Well, is there anything in this  
21 document where it refers to the 1500 foot slot?

22 MS. POLIVY: Your Honor.

23 JUDGE CHACHKIN: If there isn't, then obviously I  
24 don't see how it's relevant. It didn't give him a notice  
25 about anything about the 1500 foot slot if there isn't any

1 reference to it.

2 MS. POLIVY: Your Honor, even if it did it  
3 wouldn't have any effect on this. I mean, this is just a  
4 sidetrack that we're going to go into.

5 JUDGE CHACHKIN: But dealing with private  
6 litigation, Ms. Polivy is correct, and the question is you  
7 could argue that he could have proceeded earlier to enforce  
8 this agreement. Of course, you haven't submitted the  
9 evidence to that. His position is that until some action  
10 was taken preventing him from going on the 1500 foot then  
11 there was nothing for him to litigate at that point.

12 It was only when the landlord refused to go ahead  
13 with construction that he then would move for an injunction,  
14 injunctive relief - not for injunctive -- move for action  
15 against the landlord.

16 MS. POLIVY: I think, Your Honor, he is saying  
17 that it was only when the landlord was going to go ahead and  
18 take an action that would inhibit his lease.

19 JUDGE CHACHKIN: Or take an action contrary to his  
20 lease. But until something was going to be done there was  
21 nothing he could litigate at that point. It was still -- it  
22 was not yet appropriate to litigate.

23 In any event, if there is no reference here to  
24 1500 feet, although I don't see that this has any bearing,  
25 how this is inconsistent with his statement. I am not going

1 to receive Press Exhibit 8.

2 MR. COLE: thank you, Your Honor.

3 (The document referred to,  
4 having been previously marked  
5 for identification as Press  
6 Exhibit No. 8, was rejected.)

7 BY MR. COLE:

8 Q Mr. Rey, you yourself personally signed and sworn  
9 to the Rainbow complaint in which initiated the Rey v  
10 Gannett litigation; is that correct?

11 A I believe that's correct.

12 MR. COLE: And let me provide you and the Court  
13 and the parties with copies of -- I have provided the  
14 reporter with two copies, to counsel and to the witness  
15 copies of the document which is entitled "Verified Complaint  
16 For Specific Performance and Other Relief," which was  
17 submitted in Rey v Guy Gannett Publishing Company filed in  
18 the Circuit Court, the 11th Initial Circuit in and for Dade  
19 County, Florida. It was executed November 2, 1990.

20 I would like to have that marked as -- it's only  
21 15 pages in length, but I would like to have it marked for  
22 identification as Press Exhibit No. 9.

23 JUDGE CHACHKIN: It will be so marked.

24 MR. COLE: Thank you, Your Honor.

25

1 (The document referred to was  
2 marked for identification as  
3 Press Exhibit No. 9.)

4 MR. COLE: I want to point out for the record in  
5 one of our meetings during the discovery phase Mr. Polivy, I  
6 believe, specifically requested that documents that are  
7 submitted be submitted in their entirety. This does not  
8 include, and I will say that this does not include what was  
9 originally Exhibit A to the complaint because Exhibit A was  
10 the lease agreement which is already in the record, through  
11 to Rainbow Joint Exhibits, and therefore I just want to call  
12 attention to that. But we believe that if it's appropriate  
13 or necessary to refer to what was Exhibit A to the original  
14 complaint we can find it in the Rainbow exhibits.

15 BY MR. COLE:

16 Q Now, Mr. Rey, if you could turn to page 10 of the  
17 complaint, please, and verify, is that your signature at the  
18 bottom of the page?

19 A That's correct.

20 Q And turn to page 9, please. And I would like you  
21 to read the sentences that begin --

22 A What paragraph?

23 Q The first partial paragraph, the runover paragraph  
24 which is 11 lines down from the top. It's the line that  
25 begins, the sentence that begins, "If Press is allowed to

1 transmit from this site, it will render Rainbow's permit  
2 valueless. (See affidavit from Susan Harrison attached  
3 hereto and made a part hereof as Exhibit B."

4 Do you see that language?

5 A Yes, sir.

6 MS. POLIVY: Your Honor, may I ask the witness to  
7 take the time to read at least the entire paragraph?

8 JUDGE CHACHKIN: If he wishes to read the entire  
9 paragraph, he may --

10 THE WITNESS: Thank you, Your Honor.

11 JUDGE CHACHKIN: -- to answer further questions.

12 (Witness reads document.)

13 THE WITNESS: Okay.

14 MR. COLE: Thank you, Your Honor.

15 BY MR. COLE:

16 Q The language which I just directed your attention  
17 to refers to a statement of Susan D. Harrison which was  
18 incorporated by reference and made a part of your complaint.

19 If you could turn to page 12, please, you will  
20 find the statement of Susan D. Harrison. And I want to  
21 direct your attention on page 12 to the paragraph which is  
22 entitled "Summary of Opinion."

23 Do you see that further down the page?

24 A Yes, sir.

25 Q This statement reads that "It is my opinion that

1 if Gannett takes this action," this action refers from --  
2 you may refresh your recollection from the earlier statement  
3 above, that if Gannett leases space on top of this tower to  
4 Press Broadcasting, "Rainbow will suffer irreparable harm.  
5 Specifically, Rainbow's television station on Channel 65  
6 license will be rendered worthless. Rainbow will be unable  
7 to secure financing to build and operate this station and  
8 will be left holding a construction permit that has no value  
9 on the open market today or for the foreseeable future."

10 Do you see that language?

11 A Yes, sir.

12 Q Now, if you could move to page 13 of the exhibit,  
13 there is a section which bears the Section A designation,  
14 and that paragraph begins, "If Gannett allows Press to  
15 broadcast."

16 Do you see that language?

17 A Yes.

18 Q "If Gannett allows Press to broadcast from the top  
19 spot an aperture on the Bithlo Tower," the Bithlo Tower, am  
20 I correct, is the tower that you were proposing to be on,  
21 that Rainbow was proposing to be on?

22 A It's been called the Bithlo Tower. I assume that  
23 it is the same.

24 Q Well, this is your document.

25 A No, this is Susan Harrison's document, sir.

1 Q But you incorporate it by reference in your  
2 complaint.

3 Is there any donut in your mind?

4 A About what?

5 Q That this was the Bithlo Tower that she was  
6 referring to as the tower?

7 A I believe that is what she is referring to, yes.

8 Q Okay, if I am continue to read.

9 "...Rainbow's ability to complete in the Orlando  
10 television market will be obstructed as to the point that it  
11 would not be able to secure the financing to build the  
12 television station for Channel 65 on the Bithlo Tower or on  
13 any other tower in the area."

14 Do you see that language?

15 A Yes.

16 Q Okay. And next move to page 14, please, and  
17 toward the top there is a paragraph numbered eight which  
18 states, "No financing will be available to build and operate  
19 this station given that it is not economically viable and  
20 the station will never be built."

21 Do you see that language?

22 A Yes.

23 Q You yourself swore to the accuracy of the RBC  
24 complaint in the Gannett litigation; is that correct?

25 A That's correct.

1 Q And that complaint specifically incorporated by  
2 reference to Ms. Harrison's statement.

3 A This statement is part of that complaint, yes.

4 Q Now, would you agree that in November of 1990,  
5 that if were Press were allowed to operate from the top slot  
6 of the Bithlo Tower Rainbow will be unable to secure  
7 financing to build and operate a station?

8 MS. POLIVY: Your Honor, I don't know where this  
9 questioning is going, but it is an improper question. All  
10 that a verified complaint does is ---

11 JUDGE CHACHKIN: Wait a minute. If you have an  
12 objection just state it, but don't --

13 MS. POLIVY: Okay. The objection is that he has  
14 in his question is whether or not since Mr. Rey has verified  
15 the complaint, and that included Susan Harrison's expert  
16 opinion of whether there --

17 JUDGE CHACHKIN: He just simply asked if he  
18 agrees.

19 MS. POLIVY: There is a sentence in Susan  
20 Harrison's opinion -- not that he agrees with Susan  
21 Harrison's opinion that he attached was true and correct to  
22 the best of his knowledge, but whether in verifying he was  
23 saying that that opinion was correct.

24 JUDGE CHACHKIN: Well, that's not a proper  
25 objection.



1 MS. POLIVY: The form of the question is improper,  
2 Your Honor.

3 JUDGE CHACHKIN: Overruled. The witness can give  
4 his answer if he agrees with Ms. Harrison's opinion. I will  
5 overrule the objection.

6 THE WITNESS: I'm sorry, Mr. Cole. Where are we  
7 again?

8 BY MR. COLE:

9 Q Do you agree with Ms. Harrison's opinion that if  
10 Press were allowed to operate from the top slot of the  
11 Bithlo Tower Rainbow would be unable to secure financing to  
12 build and operate the station?

13 A I -- I don't see that on page 14. Is that where  
14 we are? I'm sorry.

15 Q No, that's the first of the three that we focused  
16 on, and that's on page 12.

17 A I believed then that if Rainbow were to be  
18 relegated as a sixth station in the market that it would  
19 have been worthless at that time, yes.

20 Q And so you also agree, am I correct, with Ms.  
21 Harrison's later statement which appears at page 13, that  
22 Rainbow would not be able to secure the financing to build  
23 the television station for Channel 65 on the Bithlo Tower or  
24 any other tower in the area if Press were allowed the top  
25 slot; is that correct?